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Agenda item 141
Administration of justice at the United Nations

Letter dated 23 October 2012 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter from the Chair of the Sixth Committee, with regard to agenda item 141 (see annex).

(*Signed*) Vuk **Jeremić**

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Annex

I have the honour to write to you with regard to agenda item 141, "Administration of justice at the United Nations".

As you are aware, by its resolution 66/237, the General Assembly invited the Sixth Committee to consider the legal aspects of the reports to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters, and decided, inter alia, to revert, at its sixty-seventh session, to the issue of the mandate, scope and functioning of the Office of Staff Legal Assistance, in both the Fifth Committee and the Sixth Committee, in their respective capacities. During the present session, at its second plenary meeting, on 21 September 2012, the General Assembly decided to allocate this item to the Fifth Committee and to the Sixth Committee.

The Sixth Committee has considered this item at its 10th and 14th plenary meetings on 15 and 19 October 2012, as well as in informal consultations. The Sixth Committee notably considered the legal aspects of the reports submitted by the Secretary-General and the Internal Justice Council (A/67/265 and Corr.1 and A/67/98, respectively), as well as the amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which were adopted by the Tribunals subject to the approval of the General Assembly (see A/67/349). I should draw your attention to a number of specific issues relating to the legal aspects of these reports, as discussed in the Sixth Committee.

The Sixth Committee had no legal objections to the approval of the amendments to the rules of procedure, as agreed by the Dispute Tribunal and the Appeals Tribunal. The Sixth Committee noted that the amendments aimed at increasing the number of plenary meetings of the Dispute Tribunal to two per year and the sessions of the Appeals Tribunal to three per year were based on the geographical decentralization of the Tribunals, but had cost implications that should be considered by the Fifth Committee. The position of the Sixth Committee was based on the understanding that the increase in the number of annual plenary meetings and sessions was not to be understood as being mandatory, but as permitting the Tribunals to hold up to two plenary meetings and three sessions, respectively, as required.

With regard to the proposed amendment to article 9 of the rules of procedure of the Appeals Tribunal, and based upon clarification sought from the Secretariat, this amendment appeared to aim at ensuring equality of treatment by remedying a discrepancy between the time limits for filing an appeal, following the amendment to article 7, paragraph 1 (c), decided by the General Assembly by resolution 66/237, paragraph 31, and the time limits for filing an answer and cross-appeal. The Sixth Committee therefore endorses the proposed amendment to article 9 of the rules of procedure of the Appeals Tribunal.

The Sixth Committee considered that, from a legal point of view, it was sound to allow individual contractors and consultants to have access to the informal system (see A/67/265, annex V), bearing in mind the repeated calls by the General Assembly to resolve as many disputes as possible through informal means of redress so as to avoid unnecessary litigation. Concern was expressed, however, as to the risk of overburdening the Office of the United Nations Ombudsman and Mediation Services.

The Sixth Committee regarded favourably the proposal of the Secretary-General for implementing a mechanism of expedited arbitration procedures for consultants and individual contractors contained in annex IV to the report of the Secretary-General on the administration of justice (A/67/265), and called for its further elaboration, stressing the importance of ensuring that effective remedies are available to these categories of individuals. It was underlined that, in the further elaboration, all possibilities to further lighten and streamline such mechanism should be explored.

It was noted that the question of access of consultants and individual contractors to the informal system and the establishment of expedited arbitration procedures are distinct issues that should be treated separately; the consideration of one of them shall be without prejudice to the consideration of the other.

The Sixth Committee highlighted that the United Nations shall ensure that effective remedies are available to all categories of United Nations personnel. In this regard, the Sixth Committee took note of annex VI to the report of the Secretary-General (A/67/265) concerning the question of access to the system of administration of justice for non-staff personnel not covered under the dispute resolution mechanism and other measures available to them for addressing disputes. It was observed that the nature of the relationship between the persons in each of the categories described in paragraph 1 of annex VI to the report and the United Nations differed markedly, and that therefore each category of non-staff personnel should be considered separately with a view to identifying the effective legal remedies that need to be made available. The view was expressed that the question of legal remedies should be further considered as regards categories (a) to (g); the persons under category (h) do not appear to be personnel of the United Nations.

With respect to the proposals for mechanisms for addressing possible misconduct of judges, contained in annex VII to the report of the Secretary-General (A/67/265), the Sixth Committee expressed interest in the proposal of the Secretary-General, which it considered legally sound and corresponding to international practice.

Regarding the question of a code of conduct for legal representation (see A/67/265, annex VIII), the Sixth Committee stressed the need, from a legal perspective, to ensure that all individuals acting as legal representatives, whether staff members or external counsel, are subject to the same standards of professional conduct applicable in the United Nations system.

As to the question of representation of staff members, the Sixth Committee expressed the view that, from a legal point of view, all four options described in annex II to the report of the Secretary-General (A/67/265) had their merits and should be retained in the system. Referring to the opinions expressed in the report of the Internal Justice Council (see A/67/98, paragraphs 50-52) and the memorandum of the judges of the Dispute Tribunal (see A/67/98, annex II, paragraphs 25-26), the Sixth Committee underlined the important role of the Office of Staff Legal Assistance in representing staff members.

The Sixth Committee was of the view that the question of a mandatory staff-funded mechanism to support the Office of Staff Legal Assistance (see A/67/265, annex II) should be considered by the Fifth Committee, taking into account the legal concerns raised in the report of the Secretary-General.

The Sixth Committee noted the recommendation of the Secretary-General concerning the extension of the mandate of the three sitting ad litem judges of the Dispute Tribunal for another year, until 31 December 2013 (see A/67/265, paragraphs 37 and 199 (b)). Delegations acknowledged that the extension of the three ad litem judges, which would keep the number of full-time judges working on the current caseload to six, was a necessary temporary measure aimed at ensuring the continued delivery of justice. Referring to the report of the Internal Justice Council (A/67/98) and the previous consideration of the issue in the Sixth Committee, as reflected in the letter from the Chair of the Sixth Committee to the President of the General Assembly in 2011 (see A/C.5/66/9), delegations expressed legal concern at the situation and emphasized the need to find a long-term solution to the question of the composition of the Dispute Tribunal with a view to guaranteeing the sustained efficiency of the formal system. It was noted that this issue had financial implications and should be considered by the Fifth Committee.

In this context, the Sixth Committee also considered the proposal of the Internal Justice Council concerning half-time judges of the Dispute Tribunal (see A/67/98, paragraphs 23-24). The Committee was of the view that this issue was closely related to the question of the number of full-time judges at the Dispute Tribunal. The Committee recognized the efforts made by the Appeals Tribunal and the Dispute Tribunal to fulfil their mandate as efficiently as possible and encouraged them to continue those efforts.

The Sixth Committee took note of paragraph 159 of the report of the Secretary-General (A/67/265) and of the opinion of the Secretary-General that, at this point in time, there was no need to review the statutes of the Tribunals. The Committee also noted paragraph 173 of the same report on the legal representation of the Secretary-General.

As regards the question of award of exemplary or punitive damages (see A/67/265, paragraphs 178-181), the Sixth Committee supported the recommendation of the Secretary-General that further reporting on this question be requested for consideration at the sixty-eighth session of the General Assembly. It was pointed out that any further consideration of this issue should take due note of the legal differences between the concepts of punitive damages, exemplary damages and moral damages as currently applied in the jurisprudence of national and international tribunals. In this regard, delegations reaffirmed that, in accordance with paragraph 28 of General Assembly resolution 63/253, the Dispute Tribunal and the Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes (see General Assembly resolution 66/237, paragraph 9).

In addition, the Sixth Committee considered other issues raised by the Internal Justice Council in its report. Delegations underlined the important role played by the Council in the system of administration of justice. Concerning the question of the qualifications of Appeals Tribunal judges (see A/67/98, paragraph 35), as stipulated in the statute, some delegations were open to considering the proposal of the Council, while other delegations recalled that these qualifications had been discussed carefully and at great length during the negotiations of the statutes.

Finally, the Sixth Committee considered issues raised in the memorandums from the judges of the Appeals Tribunal and the Dispute Tribunal (see A/67/98, annexes I and II, respectively). Concerning the proposal to establish a direct line of reporting from the Tribunals to the General Assembly, it was recalled that the

Assembly had already addressed this issue in paragraph 45 of resolution 66/237 and that the views of the Tribunals are now reproduced in full in annexes to the report of the Internal Justice Council, thus ensuring their timely publication.

It would be appreciated if the present letter could be brought to the attention of the Chair of the Fifth Committee, and be circulated as a document of the General Assembly, under agenda item 141.

(*Signed*) Yuriy **Sergeyev**
Chair of the Sixth Committee at the
sixty-seventh session of the General Assembly